

## 1993 Session

FISCAL ESTIMATE  
DOA-2048 (R 10/92)☒ ORIGINAL  
☐ CORRECTED  
☐ UPDATED  
☐ SUPPLEMENTALLRB or Bill No./Adm. Rule No.  
AB-649

Amendment No. if Applicable

## Subject

Expanding the premises where offenses related to reckless driving &amp; OWI and duties of person involved in accident

## Fiscal Effect

State: ☒ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation☐ Increase Existing Appropriation  
☐ Decrease Existing Appropriation  
☐ Create New Appropriation  
☐ Increase Existing Revenues  
☐ Decrease Existing Revenues☐ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☐ Yes ☐ No☐ Decrease CostsLocal: ☒ No local government costs1. ☐ Increase Costs  
☐ Permissive ☐ Mandatory  
2. ☐ Decrease Costs  
☐ Permissive ☐ Mandatory3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory  
4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory5. Types of Local Governmental Units Affected:  
☐ Towns ☐ Villages ☐ Cities  
☐ Counties ☐ Others  
☐ School Districts ☐ VTAE Districts

## Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

## Affected Ch. 20 Appropriations

## Assumptions Used in Arriving at Fiscal Estimate

State law prohibiting reckless driving, driving while under the influence of an intoxicant or controlled substance, and requiring a person involved in an accident to perform certain acts, applies to all highways and premises held out to the public for use of their motor vehicles. The intent of this bill is to expand applicability of these laws to any premise constructed and maintained to accommodate vehicular traffic, including private parking lots.

Since citations are not currently issued for this situation; there is no current information on the number of citations that might be issued as a result of this expansion. It is assumed that the number of citations issued statewide as a result of this change will be fairly small, 10 or less per month.

It is anticipated that this legislation will result in a slight workload increased for local law enforcement agencies, the State Patrol, and the Revocations & Suspensions, License Records, and Compliance & Restoration sections within the Division of Motor Vehicles. But that impact can be absorbed within existing resources.

No data processing changes will be necessary, because the legislation expands current law, enabling use of an existing charge code. It is estimated there will be no revenue impact from the bill.

## Long-Range Fiscal Implications

Agency/Prepared by: (Name &amp; Phone No.)

Department of Transportation  
Roland D. Couey (608) 264-9524

Authorized Signature/Telephone No.

James D. McDonnell (608) 266-7575

Date

08/06/93

**FISCAL ESTIMATE WORKSHEET**Detailed Estimate of Annual Fiscal Effect  
DOA-2047(R10/92)☒ ORIGINAL  
☐ CORRECTED☐ UPDATED☐ SUPPLEMENTAL**1993 SESSION**

LRB or Bill No./Adm. Rule No.

AB-649

Amendment No.

Subject

Expanding the premises where offenses related to reckless driving &amp; OWI and duties of person involved in accident

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

## II. Annualized Costs:

II. Annualized Costs:		Annualized Fiscal Impact on State funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations-Salaries and Fringes		\$	\$ -
(FTE Position Changes)		( FTE)	(- FTE)
State Operations-Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
TOTAL State Costs by Category		\$ 0	\$ - 0
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED		\$	\$ -
PRO/PRS		\$	\$ -
SEG/SEG-S		\$	\$ -
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$ 0	\$ - 0

## NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)  
Department of Transportation  
Roland D. Couey (608) 264-9524Authorized Signature/Telephone No.  
James D. McDonnell (608) 266-7575Date  
08/06/93

## FISCAL ESTIMATE

DOA-2048 (R 10/92)

☒ ORIGINAL ☐ UPDATED  
☐ CORRECTED ☐ SUPPLEMENTAL

## Subject

Expanding the premises where offenses related to reckless driving &amp; OWI and duties of person involved in accident

## Fiscal Effect

State: ☒ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues  
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues  
☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs  
☐ Permissive ☐ Mandatory  
2. ☐ Decrease Costs  
☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory  
4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:  
☐ Towns ☐ Villages ☐ Cities  
☐ Counties ☐ Others  
☐ School Districts ☐ VTAE Districts

## Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

## Affected Ch. 20 Appropriations

## Assumptions Used in Arriving at Fiscal Estimate

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No data processing changes will be necessary, because the legislation expands current law, enabling use of an existing charge code. It is estimated there will be no revenue impact from the bill.

## Long-Range Fiscal Implications

Agency/Prepared by: (Name &amp; Phone No.)

Department of Transportation  
Roland D. Couey (608) 264-9524

Authorized Signature/Telephone No.

*James D. McDonnell*  
James D. McDonnell (608) 266-7575

Date

08/06/93

**FISCAL ESTIMATE WORKSHEET****1993 SESSION**Detailed Estimate of Annual Fiscal Effect  
DOA-2047(R10/92)☒ ORIGINAL  
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Amendment No.

Subject

Expanding the premises where offenses related to reckless driving &amp; OWI and duties of person involved in accident

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

## II. Annualized Costs:

Annualized Fiscal Impact on State funds from:  
Increased Costs      Decreased Costs

## A. State Costs by Category

State Operations-Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE)	( - FTE)
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	<b>\$ 0</b>	<b>\$ - 0</b>

## B. State Costs by Source of Funds

Increased Costs      Decreased Costs

GPR	\$	\$ -
FED	\$	\$ -
PRO/PRS	\$	\$ -
SEG/SEG-S	\$	\$ -

## III. State Revenues-

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$ 0</b>	<b>\$ - 0</b>

## NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 0

\$ 0

NET CHANGE IN REVENUES

\$ 0

\$ 0

Agency/Prepared by: (Name & Phone No.)  
Department of Transportation  
Roland D. Couey (608) 264-9524Authorized Signature/Telephone No.  
James D. McDonnell (608) 266-7575Date  
08/06/93





## FACSIMILE TRANSMISSION RECORD

ILLINOIS STATE POLICE / SPRINGFIELD, ILLINOIS

LEGAL SECTION / DIRECTOR'S OFFICE

217/ 524-5743

TO: Mr. Pete ConnorWisconsin,FAX TELEPHONE NUMBER: 608 266 5648FROM: Mike McIntosh

ILLINOIS STATE POLICE - LEGAL SECTION

FAX TELEPHONE NUMBER: 217/ 524-5743

VOICE TELEPHONE NUMBER: 217/ 782-7658

Number of pages (including this Record page): 10

Time/Date Transmitted: \_\_\_\_\_

Comments:

**5/11-501.1. Suspension of drivers license—Statutory summary alcohol or other drug related suspension—Implied consent**

*Text of section effective until July 1, 1993.*

§ 11-501.1. Suspension of drivers license; Statutory summary alcohol or other drug related suspension; Implied consent.

(a) Any person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent, subject to the provisions of Section 11-501.2, to a chemical test or tests of blood, breath, or urine for the purpose of determining the alcohol, other drug, or combination thereof content of such person's blood if arrested, as evidenced by the issuance of a Uniform Traffic Ticket, for any offense as defined in Section 11-501 or a similar provision of a local ordinance. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing said officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test or both has been administered.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this Section and the test or tests may be administered, subject to the provisions of Section 11-501.2.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in the statutory summary suspension of such person's privilege to operate a motor vehicle as provided in Section 6-208.1 of this Code. The person shall also be warned by the law enforcement officer that if the person submits to the test or tests provided in paragraph (a) of this Section and the alcohol concentration in such person's blood or breath is 0.10 or greater, or any amount of a drug, substance or compound resulting from the unlawful use or consumption of cannabis as covered by the Cannabis Control Act<sup>1</sup> or a controlled substance listed in the Illinois Controlled Substances Act<sup>2</sup> is detected in such person's blood or urine, a statutory summary suspension of such person's privilege to operate a motor vehicle, as provided in Sections 6-208.1 and 11-501.1 of this Code will, be imposed.

(d) If the person refuses testing or submits to a test which discloses an alcohol concentration of 0.10 or more, or any amount of a drug, substance, or compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act or a controlled substance listed in the Illinois Controlled Substances Act, the law enforcement officer shall immediately submit a sworn report to the circuit court of venue and the Secretary of State, certifying that the test or tests was or were requested pursuant to paragraph (a) and the person refused to submit to a test, or tests, or submitted to testing which disclosed an alcohol concentration of 0.10 or more.

(e) Upon receipt of the sworn report of a law enforcement officer submitted under paragraph (d), the Secretary of State shall enter the statutory summary suspension for the periods specified in Section 6-208.1, and effective as provided in paragraph (g).

If the person is a first offender as defined in Section 11-500 of this Code, and is not convicted of a violation of Section 11-501 of this Code or a similar provision of a local ordinance, then reports received by the Secretary of State under this Section shall, except during the actual time the Statutory Summary Suspension is in effect, be privileged information and for use only by the courts, police officers, prosecuting authorities or the Secretary of State.

(f) The law enforcement officer submitting the sworn report under paragraph (d) shall serve immediate notice of the statutory summary suspension on the person and such suspension shall be effective as provided in paragraph (g). In cases where the blood alcohol concentration of 0.10 or greater or any amount of a drug, substance or compound resulting from the unlawful use or consumption of cannabis as covered by the Cannabis Control Act or a controlled substance listed in the Illinois Controlled Substances Act is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer shall give notice as provided in this Section or by deposit in the United States mail of such notice in an envelope with postage prepaid and addressed to such person at his address as shown on the Uniform Traffic Ticket and the statutory summary suspension shall begin as provided in paragraph (g). The officer shall confiscate any Illinois driver's license or permit on the person at the time of arrest. If the person has a valid driver's license or permit, the officer shall issue the person a receipt, in a form prescribed by the Secretary of State, which will allow that person to drive during the periods provided for in paragraph (g). The officer shall immediately forward the driver's license or permit to the circuit court of venue along with the sworn report provided for in paragraph (d).

(g) The statutory summary suspension referred to in this Section shall take effect on the 46th day following the date the notice of the statutory summary suspension was given to the person.

(h) The following procedure shall apply whenever a person is arrested for any offense as defined in Section 11-501 or a similar provision of a local ordinance:

Upon receipt of the sworn report from the law enforcement officer, the Secretary of State shall confirm the statutory summary suspension by mailing a notice of the effective date of such suspension to the person and the court of venue. However, should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of the statutory summary suspension shall not be mailed to the person or entered to the record, instead the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any such defect.

P.A. 78-1586, § 11-501.1, added by P.A. 77-1800, § 1, eff. July 1, 1971. Amended by P.A. 77-1881, § 1, eff. July 1, 1972; P.A. 77-1884, § 1, eff. June 30, 1972; P.A. 78-255, § 27, eff. Oct. 1, 1973; P.A. 79-1388, § 12, eff. Oct. 1, 1976; P.A. 82-221, § 3, eff. Jan. 1, 1982; P.A. 82-311, § 1, eff. Jan. 1, 1982; P.A. 82-783, Art. III, § 37, eff. July 13, 1982; P.A. 84-272, § 7, eff. Jan. 1, 1986; P.A. 84-1894, § 5, eff. Sept. 18, 1986; P.A. 86-929, § 2, eff. Sept. 21, 1989; P.A. 86-1019, § 7, eff. July 1, 1990; P.A. 86-1475, Art. 2, § 2-25, eff. Jan. 10, 1991.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-501.1.

1 720 ILCS 550/1 et seq.

2 720 ILCS 570/100 et seq.

*For text of section effective July 1, 1993, see 625 ILCS 5/11-501.1, post.*

## 625 ILCS 5/11-501.1

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P.A. 86-1475, Art. 2, resolved multiple actions in the 86th General Assembly and made certain technical corrections in P.A. 86-1 through P.A. 86-1435.

**5/11-501.1. Suspension of drivers license—Statutory summary alcohol or other drug related suspension—Implied consent**

*Text of section effective July 1, 1992.*

§ 11-501.1. Suspension of drivers license; Statutory summary alcohol or other drug related suspension; Implied consent.

(a) Any person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent, subject to the provisions of Section 11-501.2, to a chemical test or tests of blood, breath, or urine for the purpose of determining the content of alcohol, other drug, or combination of both in the person's blood if arrested, as evidenced by the issuance of a Uniform Traffic Ticket, for any offense as defined in Section 11-501 or a similar provision of a local ordinance. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing the officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test or both has been administered. For purposes of this Section, an Illinois law enforcement officer of this State who is investigating the person for any offense defined in Section 11-501 may travel into an adjoining state, where the person has been transported for medical care, to complete an investigation and to request that the person submit to the test or tests set forth in this Section. The requirements of this Section that the person be arrested are inapplicable, but the officer shall issue the person a Uniform Traffic Ticket for an offense as defined in Section 11-501 or a similar provision of a local ordinance prior to requesting that the person submit to the test or tests. The issuance of the Uniform Traffic Ticket shall not constitute an arrest, but shall be for the purpose of notifying the person that he or she is subject to the provisions of this Section and of the officer's belief of the existence of probable cause to arrest. Upon returning to this State, the officer shall file the Uniform Traffic Ticket with the Circuit Clerk of the county where the offense was committed, and shall seek the issuance of an arrest warrant or a summons for the person.

(b) Any person who is dead, unconscious, or who is otherwise in a condition rendering the person incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this Section and the test or tests may be administered, subject to the provisions of Section 11-501.2.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in the statutory summary suspension of the person's privilege to operate a motor vehicle as provided in Section 6-208.1 of this Code. The person shall also be warned by the law enforcement officer that if the person submits to the test or tests provided in paragraph (a) of this Section and the alcohol concentration in the person's blood or breath is 0.10 or greater, or any amount of a drug, substance, or compound resulting from the unlawful use of consumption of cannabis as covered by the Cannabis Control Act<sup>1</sup> or a controlled substance listed in the

Illinois Controlled Substances Act<sup>2</sup> is detected in the person's blood or urine, a statutory summary suspension of the person's privilege to operate a motor vehicle, as provided in Sections 6-208.1 and 11-501.1 of this Code will, be imposed.

(d) If the person refuses testing or submits to a test that discloses an alcohol concentration of 0.10 or more, or any amount of a drug, substance, or compound in the person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act or a controlled substance listed in the Illinois Controlled Substances Act, the law enforcement officer shall immediately submit a sworn report to the circuit court of venue and the Secretary of State, certifying that the test or tests was or were requested under paragraph (a) and the person refused to submit to a test, or tests, or submitted to testing that disclosed an alcohol concentration of 0.10 or more.

(e) Upon receipt of the sworn report of a law enforcement officer submitted under paragraph (d), the Secretary of State shall enter the statutory summary suspension for the periods specified in Section 6-208.1, and effective as provided in paragraph (g).

If the person is a first offender as defined in Section 11-500 of this Code, and is not convicted of a violation of Section 11-501 of this Code or a similar provision of a local ordinance, then reports received by the Secretary of State under this Section shall, except during the actual time the Statutory Summary Suspension is in effect, be privileged information and for use only by the courts, police officers, prosecuting authorities or the Secretary of State.

(f) The law enforcement officer submitting the sworn report under paragraph (d) shall serve immediate notice of the statutory summary suspension on the person and the suspension shall be effective as provided in paragraph (g). In cases where the blood alcohol concentration of 0.10 or greater or any amount of a drug, substance, or compound resulting from the unlawful use or consumption of cannabis as covered by the Cannabis Control Act or a controlled substance listed in the Illinois Controlled Substances Act is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer shall give notice as provided in this Section or by deposit in the United States mail of the notice in an envelope with postage prepaid and addressed to the person at his address as shown on the Uniform Traffic Ticket and the statutory summary suspension shall begin as provided in paragraph (g). The officer shall confiscate any Illinois driver's license or permit on the person at the time of arrest. If the person has a valid driver's license or permit, the officer shall issue the person a receipt, in a form prescribed by the Secretary of State, that will allow that person to drive during the periods provided for in paragraph (g). The officer shall immediately forward the driver's license or permit to the circuit court of venue along with the sworn report provided for in paragraph (d).

(g) The statutory summary suspension referred to in this Section shall take effect on the 46th day following the date the notice of the statutory summary suspension was given to the person.

(h) The following procedure shall apply whenever a person is arrested for any offense as defined in Section 11-501 or a similar provision of a local ordinance:

Upon receipt of the sworn report from the law enforcement officer, the Secretary of State shall confirm the statutory summary suspension by mailing a notice of the effective date of the suspension to the person and the

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court of defective complete summary suspended forward the issue P.A. 76-1 July 1, 1972; P.J. § 27, eff. 1976; P.J. eff. Jan. 1982; P.J. § 5, eff. 1989; P.J. Art. 2, § July 1, 1989; P.J. Formerly 1720 ILCS 1720 ILCS

For see 1

5/11-50 71

§ 11-5 trial of 1 out of 1 501 or a Section 2 other dr breath a the pers shall be ing prov. 1. Ch breath e under th formed : partmen ment of permit 4 Director tion with approve the qual such an terminal ment an ment. prescrib tion.

2. W request of Secti medicin approve draw bl drug, or shall no 3. T1 fied tes fied per test or

court of venue. However, should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of the statutory summary suspension shall not be mailed to the person or entered to the record, instead the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any defect.

P.A. 76-1586, § 11-501.1, added by P.A. 77-1800, § 1, eff. July 1, 1971. Amended by P.A. 77-1881, § 1, eff. July 1, 1972; P.A. 77-1884, § 1, eff. June 30, 1972; P.A. 78-255, § 27, eff. Oct. 1, 1973; P.A. 79-1863, § 12, eff. Oct. 1, 1976; P.A. 82-231, § 3, eff. Jan. 1, 1983; P.A. 82-311, § 1, eff. Jan. 1, 1982; P.A. 82-783, Art. III, § 87, eff. July 18, 1982; P.A. 84-272, § 7, eff. Jan. 1, 1986; P.A. 84-1394, § 5, eff. Sept. 18, 1986; P.A. 85-929, § 2, eff. Sept. 21, 1989; P.A. 86-1019, § 7, eff. July 1, 1990; P.A. 86-1476, Art. 2, § 2-25, eff. Jan. 10, 1991; P.A. 87-1221, § 1, eff. July 1, 1993.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-501.1.

1720 ILCS 550/1 et seq.

1720 ILCS 570/100 et seq.

*For text of section effective until July 1, 1993, see 625 ILCS 5/11-501.1, ante.*

#### 5/11-501.2. Chemical and other tests

*Text of section effective until July 1, 1993.*

§ 11-501.2. Chemical and other tests. (a) Upon the trial of any civil or criminal action or proceeding arising out of an arrest for an offense as defined in Section 11-501 or a similar local ordinance or proceedings pursuant to Section 2-118.1, evidence of the concentration of alcohol, other drug or combination thereof in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such test is made the following provisions shall apply:

1. Chemical analyses of the person's blood, urine, breath or other bodily substance to be considered valid under the provisions of this Section shall have been performed according to standards promulgated by the Department of Public Health in consultation with the Department of State Police by an individual possessing a valid permit issued by that Department for this purpose. The Director of the Department of Public Health in consultation with the Department of State Police is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, to issue permits which shall be subject to termination or revocation at the discretion of that Department and to certify the accuracy of breath testing equipment. The Illinois Department of Public Health shall prescribe regulations as necessary to implement this Section.

2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of Section 11-501.1, only a physician authorized to practice medicine, a registered nurse or other qualified person approved by the Department of Public Health may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content therein. This limitation shall not apply to the taking of breath or urine specimens.

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of their own choosing administer a chemical test or tests in addition to any administered at the di-

rection of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or such person's attorney.

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, such facts shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

3. If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol.

4. The foregoing provisions of this Section shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question whether the person was under the influence of alcohol.

(c) If a person under arrest refuses to submit to a chemical test under the provisions of Section 11-501.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person under the influence of alcohol, or other drugs, or combination of both was driving or in actual physical control of a motor vehicle. P.A. 76-1586, § 11-501.2, added by P.A. 82-311, § 1, eff. Jan. 1, 1982. Amended by P.A. 84-25, Art. IV, § 27, eff. July 18, 1985; P.A. 86-929, § 2, eff. Sept. 21, 1989.

Formerly Ill.Rev.Stat.1991, ch. 95½, § 11-501.2.

*For text of section effective July 1, 1993, see 625 ILCS 5/11-501.2, post.*

#### 5/11-501.2. Chemical and other tests

*Text of section effective July 1, 1993.*

§ 11-501.2. Chemical and other tests. (a) Upon the trial of any civil or criminal action or proceeding arising out of an arrest for an offense as defined in Section 11-501 or a similar local ordinance or proceedings pursuant to Section 2-118.1, evidence of the concentration of alcohol, other drug or combination thereof in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such test is made, the following provisions shall apply:

1. Chemical analyses of the person's blood, urine, breath or other bodily substance to be considered valid

## 625 ILCS 5/11-501.2

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under the provisions of this Section shall have been performed according to standards promulgated by the Department of Public Health in consultation with the Department of State Police by an individual possessing a valid permit issued by that Department for this purpose. The Director of the Department of Public Health in consultation with the Department of State Police is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, to issue permits which shall be subject to termination or revocation at the discretion of that Department and to certify the accuracy of breath testing equipment. The Illinois Department of Public Health shall prescribe regulations as necessary to implement this Section.

2. When a person in this State shall submit to a blood test at the request of a law enforcement officer under the provisions of Section 11-501.1, only a physician authorized to practice medicine, a registered nurse or other qualified person approved by the Department of Public Health may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content therein. This limitation shall not apply to the taking of breath or urine specimens.

When a blood test of a person who has been taken to an adjoining state for medical treatment is requested by an Illinois law enforcement officer, the blood may be withdrawn only by a physician authorized to practice medicine in the adjoining state, a registered nurse, or a trained phlebotomist acting under the direction of the physician. The law enforcement officer requesting the test shall take custody of the blood sample, and the blood sample shall be analyzed by a laboratory certified by the Department of Public Health for that purpose.

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of their own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or such person's attorney.

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, such facts shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

3. If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol.

4. The foregoing provisions of this Section shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question whether the person was under the influence of alcohol.

(c) If a person under arrest refuses to submit to a chemical test under the provisions of Section 11-501.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person under the influence of alcohol, or other drugs, or combination of both was driving or in actual physical control of a motor vehicle. P.A. 76-1586, § 11-501.2, added by P.A. 82-311, § 1, eff. Jan. 1, 1982. Amended by P.A. 84-25, Art. IV, § 27, eff. July 18, 1985; P.A. 86-929, § 2, eff. Sept. 21, 1989; P.A. 87-1221, § 1, eff. July 1, 1993.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-501.2.

*For text of section effective until July 1, 1993, see 625 ILCS 5/11-501.2, ante.*

5/11-501.3. § 11-501.3. Repealed by P.A. 84-1394, § 7, eff. Sept. 18, 1986

5/11-501.4. Admissibility of written blood alcohol test results conducted in the regular course of providing emergency medical treatment

§ 11-501.4. Admissibility of written blood alcohol test results conducted in the regular course of providing emergency medical treatment. (a) Notwithstanding any other provision of law, the written results of blood alcohol tests conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961<sup>1</sup>, when each of the following criteria are met:

(1) the blood alcohol tests were ordered by a physician on duty at the hospital emergency room and were performed in the regular course of providing emergency medical treatment in order to assist the physician in diagnosis or treatment;

(2) the blood alcohol tests were performed by the hospital's own laboratory; and

(3) the written results of the blood alcohol tests were received and considered by the physician on duty at the hospital emergency room to assist that physician in diagnosis or treatment.

(b) The confidentiality provisions of law pertaining to medical records and medical treatment shall not be applicable with regard to blood alcohol tests performed under the provisions of this Section in prosecutions as specified in subsection (a) of this Section. No person shall be liable for civil damages as a result of the evidentiary use of blood alcohol test results under this Section, or as a result of that person's testimony made available under this Section.

P.A. 76-1586, § 11-501.4, added by P.A. 85-992, § 1, eff. Jan. 5, 1988.

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Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-501.4.  
1730 ILCS 5/1-1 at 222.

Another § 11-501.4 was renumbered as § 11-501.5.

#### 5/11-501.5. Preliminary breath screening test

§ 11-501.5. Preliminary Breath Screening Test. If a law enforcement officer has probable cause to believe that a person is violating or has violated Section 11-501 or a similar provision of a local ordinance, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a portable device approved by the Department of Public Health. The results of this preliminary breath screening test may be used by the law enforcement officer for the purpose of assisting with the determination of whether to require a chemical test as authorized under Sections 11-501.1 and 11-501.2, and the appropriate type of test to request. Any chemical test authorized under Sections 11-501.1 and 11-501.2 may be requested by the officer regardless of the result of the preliminary breath screening test, if probable cause for an arrest exists. The result of a preliminary breath screening test may be used by the defendant as evidence in any administrative or court proceeding involving a violation of Section 11-501 or 11-501.1.

P.A. 76-1586, § 501.4, added by P.A. 85-485, § 1, eff. Jan. 1, 1988. Renumbered § 11-501.5 and amended by P.A. 85-1209, Art. II, § 2-51, eff. Aug. 30, 1988; P.A. 86-1019, § 7, eff. July 1, 1990.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-501.5.

#### 5/11-501.6. Driver involvement in personal injury or fatal motor vehicle accident—Chemical test

§ 11-501.6. Driver involvement in personal injury or fatal motor vehicle accident—chemical test. (a) Any person who drives or is in actual control of a motor vehicle upon the public highways of this State shall be deemed to have given consent to a breath test using a portable device as approved by the Department of Public Health or to a chemical test or tests of blood, breath, or urine for the purpose of determining the alcohol or other drug content of such person's blood if there is probable cause to believe that such person was the driver at fault, in whole or in part, for a motor vehicle accident which resulted in the death or personal injury of any person. Compliance with this Section does not relieve such person from the requirements of Section 11-501.1 of this Code.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this Section. In addition, if a driver of a vehicle is receiving medical treatment as a result of a motor vehicle accident, any physician licensed to practice medicine, registered nurse or a phlebotomist acting under the direction of a licensed physician shall withdraw blood for testing purposes to ascertain the presence of alcohol or other drugs, upon the specific request of a law enforcement officer. However, no such testing shall be performed until, in the opinion of the medical personnel on scene, the withdrawal can be made without interfering with or endangering the well-being of the patient.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test, or

submission to the test resulting in an alcohol concentration of 0.10 or more may result in the suspension of such person's privilege to operate a motor vehicle.

(d) If the person refuses testing or submits to a test which discloses an alcohol concentration of 0.10 or more, the law enforcement officer shall immediately submit a sworn report to the Secretary of State on a form prescribed by the Secretary, certifying that the test or tests were requested pursuant to subsection (a) and the person refused to submit to a test or tests or submitted to testing which disclosed an alcohol concentration of 0.10 or more.

(e) The results of any test or tests administered pursuant to this Section, other than a test conducted with a portable device, may be used in any civil or criminal action. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

(1) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(2) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, such facts shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(3) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol.

(4) The foregoing provisions of this Section shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question whether the person was under the influence of alcohol.

(f) If a person refuses to submit to a chemical test under the provisions of this Section, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle.

(g) For the purposes of this Section, a personal injury shall include any injury that requires immediate professional attention in either a doctor's office or a medical facility.

P.A. 76-1586, § 11-501.6, added by P.A. 86-947, § 2, eff. Jan. 1, 1991. Amended by P.A. 86-1275, § 1, eff. Jan. 1, 1991.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-501.6.

#### 5/11-501.7. Youthful Intoxicated Drivers' Visitation Program

§ 11-501.7. (a) As a condition of probation or discharge of a person convicted of a violation of Section 11-501 of this Code, who was less than 21 years of age at the time of the offense, or a person adjudicated delinquent pursuant to the Juvenile Court Act,<sup>1</sup> for violation of Section 11-501 of this Code, the Court may order the offender to participate in the Youthful Intoxicated Drivers' Visitation Program. The Program shall consist of a supervised visitation as provided by this Section by the person to at

## 625 ILCS 5/11-501.7

## VEHICLES

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least one of the following, to the extent that personnel and facilities are available:

- (1) A State or private rehabilitation facility that cares for victims of motor vehicle accidents involving persons under the influence of alcohol.
- (2) A facility which cares for advanced alcoholics to observe persons in the terminal stages of alcoholism, under the supervision of appropriately licensed medical personnel.
- (3) If approved by the coroner of the county where the person resides, the county coroner's office or the county morgue to observe appropriate victims of motor vehicle accidents involving persons under the influence of alcohol, under the supervision of the coroner or deputy coroner.
- (b) The Program shall be operated by the appropriate probation authorities of the courts of the various circuits. The youthful offender ordered to participate in the Program shall bear all costs associated with participation in the Program. A parent or guardian of the offender may assume the obligation of the offender to pay the costs of the Program. The court may waive the requirement that the offender pay the costs of participation in the Program upon a finding of indigency.
- (c) As used in this Section, "appropriate victims" means victims whose condition is determined by the visit supervisor to demonstrate the results of motor vehicle accidents involving persons under the influence of alcohol without being excessively gruesome or traumatic to the observer.
- (d) Any visitation shall include, before any observation of victims or disabled persons, a comprehensive counseling session with the visitation supervisor at which the supervisor shall explain and discuss the experiences which may be encountered during the visitation in order to ascertain whether the visitation is appropriate.

P.A. 76-1586, § 11-501.7, added by P.A. 86-1242, § 1, eff. Jan. 1, 1991.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-501.7.

1705 ILCS 405/1-1 et seq.

#### 5/11-502. Traffic laws apply to persons riding bicycles

§ 11-502. Transportation or possession of alcoholic liquor in a motor vehicle. (a) Except as provided in paragraph (c), no driver may transport, carry, possess or have any alcoholic liquor within the passenger area of any motor vehicle upon a highway in this State except in the original container and with the seal unbroken.

(b) Except as provided in paragraph (c), no passenger may carry, possess or have any alcoholic liquor within any passenger area of any motor vehicle upon a highway in this State except in the original container and with the seal unbroken.

(c) This Section shall not apply to the passengers in a limousine when it is being used for purposes for which a limousine is ordinarily used, the passengers on a chartered bus when it is being used for purposes for which chartered buses are ordinarily used or on a motor home or mini motor home as defined in Section 1-145.01 of this Code. However, the driver of any such vehicle is prohibited from consuming or having any alcoholic liquor in or about the driver's area. Any evidence of alcoholic consumption by the driver shall be prima facie evidence of such driver's failure to obey this Section. For the purposes of this Section, a limousine is a motor vehicle of the first division

with the passenger compartment enclosed by a partition or dividing window used in the for-hire transportation of passengers and operated by an individual in possession of a valid Illinois driver's license of the appropriate classification pursuant to Section 6-104 of this Code.

(d) The exemption applicable to chartered buses under paragraph (c) does not apply to any chartered bus being used for school purposes.

(e) Any driver who is convicted of violating subsection (a) of this Section for a second or subsequent time within one year of a similar conviction shall be subject to suspension of driving privileges as provided, in paragraph 23 of subsection (a) of Section 6-206 of this Code.

P.A. 76-1586, § 11-502, eff. July 1, 1970. Amended by P.A. 77-680, § 1, eff. Aug. 9, 1971; P.A. 77-2720, § 1, eff. Jan. 1, 1978; P.A. 78-255, § 28, eff. Oct. 1, 1978; P.A. 80-911, § 1, eff. Oct. 1, 1977; P.A. 80-1453, § 1, eff. Jan. 1, 1979; P.A. 88-206, § 1, eff. Jan. 1, 1984; P.A. 84-272, § 7, eff. Jan. 1, 1986; P.A. 85-951, § 1, eff. July 1, 1988; P.A. 88-747, § 1, eff. Jan. 1, 1990.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-502.

#### 5/11-503. Reckless driving

§ 11-503. Reckless driving. (a) Any person who drives any vehicle with a willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Every person convicted of reckless driving shall be guilty of a Class A misdemeanor.

P.A. 76-1586, § 11-503, eff. July 1, 1970. Amended by P.A. 77-2720, § 1, eff. Jan. 1, 1978; P.A. 80-911, § 1, eff. Oct. 1, 1977; P.A. 86-581, § 2, eff. Jan. 1, 1990.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-503.

#### 5/11-504. Drag racing

§ 11-504. Drag racing. Any person who, as an operator of a motor vehicle, is convicted of being a participant in drag racing shall be guilty of a Class C misdemeanor, and the driver's license of such person shall be revoked in the manner provided by Section 6-205.

"Drag racing" means the act of 2 or more individuals competing or racing on any street or highway in this State in a situation in which one of the motor vehicles is beside or to the rear of a motor vehicle operated by a competing driver and the one driver attempts to prevent the competing driver from passing or overtaking, either by acceleration or maneuver, or one or more individuals competing in a race against time on any street or highway in this State. P.A. 76-1586, § 11-504, eff. July 1, 1970. Amended by P.A. 77-2720, § 1, eff. Jan. 1, 1978; P.A. 80-911, § 1, eff. Oct. 1, 1977; P.A. 88-831, § 1, eff. Jan. 1, 1984.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, § 11-504.

#### 5/11-505. Squealing or screeching

§ 11-505. No person shall operate any motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such noise from the vehicle's tires due to rapid acceleration or excessive speed around corners or other such reason.

This Section shall not apply to the following conditions:

(a) an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator; nor

(b) the emergency operation of a motor vehicle when avoiding imminent danger; nor

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(c) any re  
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P.A. 76-158  
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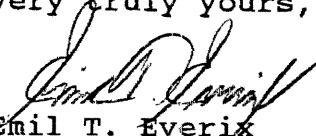
Representative David Brandemuehl

Page 2

October 11, 1993

I appreciate the efforts made by the legislature in the past to aid law enforcement in removing intoxicated persons from driving in the state. Thank you for your consideration.

Very truly yours,



Emil T. Everix

ETE:jdr



348-2313

1) Jim Zimmer Plattville Police Dept.

Defense attorneys have found loophole  
drunk driving law.

arresting officer.

Bars posting parking lots.

on VI

Lost 3<sup>rd</sup> case.

Can't arrest in <sup>private</sup> parking lot.

Call Emil Everex 723-4237

must be on highway  
exceptions drunk driving (about 5)  
346.61 - reference language public  
parking lots - technically not public

/ Kerosha case

Office of the District Attorney  
GRANT COUNTY COURT HOUSE  
130 WEST MAPLE STREET  
LANCASTER, WISCONSIN 53813  
(608) 723-4237



MAR 08 1993

ASST. DISTRICT ATTORNEY  
ANTHONY J. POZORSKI

March 4, 1993

EMIL T. EVERIX

Assemblyman David A. Brandemuehl  
Room 413  
100 North Hamilton Street  
Madison, WI 53703

*Jeff Toole*  
*me*  
*to*  
*Draft*

Dear Mr. Brandemuehl:

Some time ago we discussed a problem that has developed with regard to Section 346.61, Wis. Stats. That section states, "In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof." The case of City of Kenosha v. Phillips, 142 Wis. 2d 549 (1988), has restricted the application of that section.

As a result, Section 346.61 has been rendered somewhat meaningless. If the intent of the Legislature is to allow police officers to arrest persons for being under the influence of an intoxicant in parking lots, then a modification of Section 346.61, Wis. Stats., is required. In the past six months, police officers in this county have issued citations to persons for operating while under the influence of an intoxicant in parking lot areas and all three cases have been dismissed by the Court as a result of the Phillips case.

The problem is that the arresting officers don't want to wait until the person drives onto a highway before stopping them because of potential liability issues. As a result, if they notify an intoxicated person in a parking lot, they can merely suggest the individual not drive. However, if the person disregards the warning and drives anyway, they have no authority to arrest until such time as the car hits the roadway. The wording for Section 346.61 is very similar to the wording to Section 346.66 relating to accidents and accident reports. If the wording is changed for one section, perhaps the wording could be changed for both sections.

If you have any questions, please feel free to contact me. Thank you for your consideration of this problem.

Very truly yours,

*Emil T. Everix*  
Emil T. Everix

ETE:jdr



## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

MEMO

Date: June 4, 1993  
To: All Legislators  
From: Rep. David Brandemuehl *poil*  
Re: LRB 3045/1 Drunken Driving

*Duff* *Hinkfuss* *Huelsman*  
*Ladwig* *Urban* *Petak*  
*Ryba* *Otte* *Rosenberg*  
*Silbaugh* *Ott* *DARLING*  
*Bock*  
*Grobschmidt*  
*Roberts*  
*LaFare*

A recent Wisconsin Supreme Court ruling held that the laws regarding drunk driving did not apply to private parking lots. As a result, a police officer can see a person stumble drunk over to a car in a parking lot, but must wait until the person drives onto a public highway before a charge of drunken driving can be made.

I am introducing a bill to change the statutes to make drunken driving law applicable to any premises that are constructed and maintained in such a manner as to accommodate vehicular traffic. This expands the law to include private parking lots.

The analysis by the LRB is printed below. If you would like to co-sponsor this bill, please contact Jeff Thompson in my office at 6-1170 by June 18, 1993.

-----

### Analysis by the Legislative Reference Bureau

Under current law, the laws prohibiting reckless driving and driving while under the influence of an intoxicant or controlled substance and the laws requiring a person involved in an accident to perform certain acts apply to all highways and upon all premises held out to the public for use of their motor vehicles. The Wisconsin supreme court, in City of Kenosha v. Phillips, 142 Wis. 2d 549 (1988), held that a private parking lot of a company posted with a sign restricting the use of the parking lot was not "held out" to the public for use of their motor vehicles and therefore that the laws regarding drunk driving did not apply to that parking lot. The court affirmed the circuit court dismissal of a charge of drunken driving against the defendant because the defendant was operating a motor vehicle while in the company parking lot.

This bill provides that the laws prohibiting reckless driving and driving while under the influence of an intoxicant or controlled substance and the laws requiring a person involved in an accident to perform certain acts are applicable to any premises that are constructed and maintained in such a manner as to accommodate vehicular traffic, thus expanding the applicability of those laws to include private parking lots.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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June 6, 1993

JUN 08 1993

Representative David Brandemuehl  
Wisconsin State Assembly  
Madison, WI

Dear Representative Brandemuehl:

Several days I ago I read an article in the DUBUQUE TELEGRAPH HERALD that stated you are proposing legislation that would permit law enforcement to arrest drunken drivers in private parking lots. I agree with you that drunken drivers should be arrested in private parking lots, BUT ONLY IF THEY HAVE ACTUALLY BEGUN TO DRIVE THE VEHICLE FROM ITS PARKING SPACE. THEY WOULD ACTUALLY HAVE HAD TO START TO MOVE THE VEHICLE. TURNING ON THE IGNITION WOULD NOT QUALIFY FOR AN ARREST.

I say turning on the ignition would not qualify for an arrest because of the following scenario which may seem far-fetched but could actually happen. Mr. Miller has been at a roadhouse tavern drinking beer for several hours. Before he realizes it, it is time for the tavern to close. Mr. Miller realizes he should not be driving so he calls a friend to come to pick him up. The friend, however, does not get there by closing time. Mr. Miller must now go to this car. It is 10 degrees below zero. After waiting in his car for ten minutes, Mr. Miller is downright cold; so he turns on his ignition to get the heater going. HE DOES NOT MOVE HIS CAR.

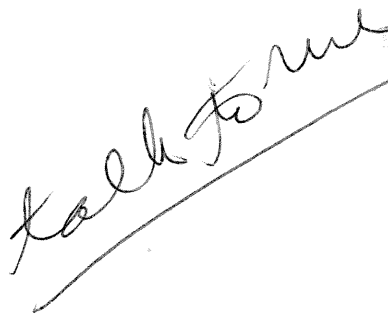
The introduction of such a bill also, in my opinion, supports the claim of many bars that law enforcement "lays waiting" for people driving away from establishments serving liquor. This is harassment, and I have never believed that the end justifies the means.

Thank you.

Sincerely,



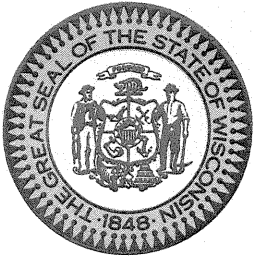
Mary M. Eckstein  
P. O. Box 686  
Cassville, WI 53806



1- telephone Co parking lot  
after hours where teenagers  
hang out and drink &  
generally caused problems.

2- Bar parking lot where  
there was a sign posted  
that the parking lot was  
for use of the bar patrons  
during their normal operating  
hours.

Police arrested & charged  
an individual in that  
parking lot after hours. The  
Court ruled that the  
lot was not ~~open~~ open to public  
use there fore the person could be charged.



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## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

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*anyone off a high  
in conversation*

### ASSEMBLY BILL 649

- 1) AB 649 IS INTRODUCED ON BEHALF OF THE GRANT COUNTY DISTRICT ATTORNEY WHO HAS HAD DRUNKEN DRIVING CASES DISMISSED AS A RESULT OF THE SUPREME COURT RULING IN CITY OF KENOSHA V. PHILLIPS.
- 2) AB 649 RESTORES SECTION 346.61 OF THE STATUTES TO THE INTERPRETATION USED PRIOR TO THE COURT CASE. THE COURT SPECIFICALLY LEFT IT UP TO THE LEGISLATURE TO CORRECT THE INTERPRETATION PROBLEM.
- 3) AB 649 IS NOT AN EXPANSION OF THE AREAS WHERE DRUNKEN OR RECKLESS DRIVING IS APPLICABLE. IT SIMPLY RESTORES THE MEANING OF THE STATUTE ERODED IN THE COURT CASE.
- 4) AB 649 WILL CLARIFY THE MEANING OF THE STATUTE AND REDUCE THE INCREASINGLY HEAVY NUMBER OF CONTESTED OUI COURT CASES BASED ON THE KENOSHA V. PHILLIPS RULING. (See attached)
- 5) DRUNKEN DRIVERS ARE JUST AS DANGEROUS IN A PRIVATE PARKING LOT AS THEY ARE ON A HIGHWAY.

DATE: February 3, 1994

**BACKGROUND:** In addition to being applicable to all highways, current laws prohibiting operating a motor vehicle while intoxicated (OWI) and reckless driving apply to all premises "held out to the public" for use of their motor vehicles. According to a 1988 Wisconsin Supreme Court decision, a private parking lot posted with a sign restricting its use was not "held out" for public use of motor vehicles and therefore OWI laws did not apply to a defendant who drove drunk in the private lot.

**SUMMARY:** AB 649 provides that reckless driving and OWI laws apply (in addition to highways) to all premises "constructed or maintained in such a manner as to accommodate vehicular traffic". This means, in effect, that reckless driving and OWI laws would apply to private parking lots, private driveways and private roads. The bill also expands current law concerning certain duties of a motor vehicle operator who is involved in an accident so that the duties would apply to accidents that occur (in addition to highways) to any premises "constructed or maintained in such a manner as to accommodate vehicular traffic". Additionally, AB 649 expands the reckless driving law so that it would apply to private snowmobile trails.

**FISCAL EFFECT:** According to a fiscal estimate prepared by the Department of Transportation, AB 649 will result in a slight workload increase for local law enforcement agencies, the State Patrol and the Revocations & Suspensions, License Records, and Compliance & Restoration sections within the Division of Motor Vehicles. DOT predicts departmental increases can be absorbed within its current budget.

**PROS:**

- (1) This bill enables law enforcement officers, who now must wait until an obviously drunk person drives away from a private parking lot and onto a public highway before they can make an OWI arrest, to respond more quickly to the public danger posed by drunk drivers.
- (2) It may make sense to authorize OWI arrests on private property in order to avert high speed chases that drunk drivers often initiate.
- (3) This bill may help law enforcement officers address the severe threat to public health and safety drunk drivers represent and further the interest Wisconsin residents have expressed in keeping drunks off the road.

**CONS:**

None were raised.

**SUPPORTERS:** Rep. Brandemuehl (author); Sen. Huelsman (co-sponsor); WI Department of Justice; Mothers Against Drunk Drivers; City of Milwaukee.

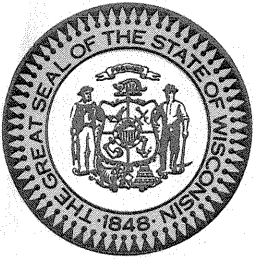
**OPPOSITION:** No one testified or registered against this bill.

**LEGISLATIVE HISTORY:** On July 28, 1993, AB 649 was introduced and referred to the Assembly Committee on Judiciary. The bill received a public hearing on October 12. On October 19, the committee recommended passage, 9-0.

**POSSIBLE AMENDMENTS:** Rep. Brandemuehl may offer a substitute amendment deleting the provisions that would apply the reckless driving laws to private property intended for motor vehicle traffic. (The provisions were included due to a drafting error.)

**CONTACT:** Kent Vernon, ARC





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## **DAVID BRANDEMUEHL**

*State Representative  
49th Assembly District*

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TESTIMONY ON ASSEMBLY BILL 649  
REP. DAVID BRANDEMUEHL

**THANK YOU CHAIRPERSON HUELSMAN AND COMMITTEE MEMBERS FOR THE OPPORTUNITY TO SPEAK IN SUPPORT OF ASSEMBLY BILL 649.**

**DESPITE FREQUENT EFFORTS TO TOUGHEN WISCONSIN'S DRUNK DRIVING LAWS, A RECENT WISCONSIN SUPREME COURT CASE HAS BROUGHT TO LIGHT A LOOPHOLE THAT SHOULD BE CLOSED. THE COURT HELD THAT THE LAWS REGARDING DRUNK DRIVING DID NOT APPLY TO PRIVATE PARKING LOTS. AS A RESULT, A POLICE OFFICER CAN WATCH A PERSON STUMBLE DRUNK OVER TO A CAR IN A PRIVATE PARKING LOT, BUT MUST WAIT UNTIL THE PERSON DRIVES ONTO A PUBLIC HIGHWAY BEFORE A CHARGE OF DRUNKEN DRIVING WILL HOLD UP IN COURT.**

**ACCORDING TO THE GRANT COUNTY DISTRICT ATTORNEY, THE COURTS HAVE NOW BEEN CITING CITY OF KENOSHA V. PHILLIPS AS AUTHORITY FOR DISMISSAL OF DRUNK DRIVING CHARGES IN THOSE CASES.**

**WITH THE HEIGHTENED PUBLIC AWARENESS OF DANGEROUS HIGH-SPEED CHASES, IT MAKES SENSE TO GIVE LAW ENFORCEMENT THE AUTHORITY TO STOP AND ARREST DRUNK DRIVERS BEFORE THEY TAKE OFF DOWN THE HIGHWAY AND ENDANGER PUBLIC SAFETY.**



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536  
Telephone (608) 266-1304  
Fax (608) 266-3830

DATE: February 10, 1994  
TO: REPRESENTATIVE DAVID BRANDEMUEHL  
FROM: Don Dyke, Senior Staff Attorney  
SUBJECT: Effect of 1993 Assembly Bill 649 on Reckless Operation of a Snowmobile

This memorandum, prepared at your request, discusses the effect of 1993 Assembly Bill 649 on the application of a current statute relating to reckless driving, s. 346.62, Stats., to the reckless operation of a snowmobile. Assembly Bill 649 relates to expanding the places where certain offenses relating to reckless driving, operating a vehicle while under the influence of an intoxicant (OWI) and the duties of a person involved in an accident apply.

Based on the discussion below, it appears that the most persuasive position on the issue in question is that s. 346.62, Stats., does not currently apply to snowmobiles and, therefore, Assembly Bill 649 does not affect the application of s. 346.62 to snowmobiles. This conclusion is supported by apparent legislative intent and, indirectly, by interpretation of relevant statutes by the Attorney General and by the Department of Natural Resources (DNR).

### 1993 Assembly Bill 649

Current provisions in ch. 346, Stats., that prohibit reckless driving and OWI and penalize failure to report accidents apply upon highways and upon "all premises held out to the public for use of their motor vehicles," whether the premises are publicly or privately owned and whether or not a fee is charged for their use [ss. 346.61 and 346.66, Stats.]. Assembly Bill 649 provides that the reckless driving, OWI and accident reporting laws apply to any premises "constructed or maintained in such a manner as to accommodate vehicular traffic," whether or not the premises are publicly or privately owned and whether or not a fee is charged for their use. The new language replaces the current language, "held out to the public for use of their motor vehicles."

Assembly Bill 649 is in response to a decision of the Wisconsin Supreme Court holding that a private parking lot of a large manufacturing company, posted with a sign restricting use of the

lot, was not held out to the public for the use of their motor vehicles. As a result of that decision, the Wisconsin Supreme Court upheld the dismissal of an OWI charge against a person who had been operating a motor vehicle on the private company parking lot while intoxicated [*City of Kenosha v. Phillips*, 142 Wis. 2d 549, 419 N.W. 2d 236 (1988)]. Under Assembly Bill 649, the OWI law would apply to the private parking lot.

**Application Under Current Law of s. 346.62, Stats., Reckless Driving, to Operation of Snowmobiles**

The reckless driving statute affected by Assembly Bill 649 is s. 346.62. That section prohibits a person from endangering the safety of any person or property, or causing bodily harm or great bodily harm to another, by the negligent operation of a vehicle. Under the statute, the terms "bodily harm," "great bodily harm," "negligent" and "vehicle" are defined by referencing definitions contained in ss. 939.22 and 939.25, Stats., which provide definitions for use in the Criminal Code. The cross-referenced definition of "vehicle" is "any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air" [s. 939.22 (44), Stats.]. This definition includes within its scope, among other things, snowmobiles.

The definition of "vehicle" used in s. 346.62 may be contrasted with the definitions of "motor vehicle" and "vehicle" that generally apply in ch. 346:

"Motor vehicle" means a vehicle, including a combination of 2 or more vehicles or an articulated vehicle, which is self-propelled, except a vehicle operated exclusively on a rail.... A snowmobile and an all-terrain vehicle shall only be considered motor vehicles for purposes made specifically applicable by statute [s. 340.01 (35), Stats.].

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile shall not be considered a vehicle except for purposes made specifically applicable by statute [s. 340.01 (74), Stats.].

[Under s. 340.01 (intro.), the above definitions apply to chs. 340 to 349 and 351 "unless a different meaning is expressly provided or the context clearly indicates a different meaning."]

Given the definition of "vehicle" applicable to s. 346.62, it would appear, despite the general exclusion of snowmobiles in references to motor vehicles and vehicles in ch. 346, that snowmobiles are covered by the reckless driving prohibitions of s. 346.62. However, other relevant statutory provisions make doubtful the intent to apply s. 346.62 to snowmobiles.

Chapter 346 ("Rules of the Road") applies exclusively upon "highways," except as otherwise expressly provided in the chapter [s. 346.02 (1), Stats.]. The rules of the road in ch. 346 generally apply to "vehicles" or "motor vehicles." As noted above, snowmobiles are not considered vehicles or motor vehicles for purposes of ch. 346 unless specifically provided. Therefore, the provisions of ch. 346 do not apply to snowmobiles unless that application is specifically stated. Section 346.02 (10), Stats., provides that the operator of a snowmobile upon a "roadway" (basically, a highway exclusive of the shoulder) is, in addition to the provisions of ch. 350, Stats. (which regulate snowmobiles generally), subject to specified provisions of ch. 346. Section 346.62 is not among the cited sections of ch. 346. Thus, the operator of a snowmobile upon a roadway is not subject to s. 346.62.

While the applicability provisions of s. 346.02 (10) clearly provide that s. 346.62 does not apply to the operator of a snowmobile upon a roadway, those provisions do not directly address the issue of whether s. 346.62 applies to the operator of a snowmobile while not upon a roadway. A reasonable inference from the applicability section is that s. 346.62 does not apply to the operator of a snowmobile under any circumstance. There appears to be no reasonable distinction to be made regarding the application of s. 346.62 to the operator of a snowmobile based upon whether the snowmobile is on a roadway or not on a roadway. Indeed, it would seem more reasonable to have the reckless driving section apply when the operator of a snowmobile is on a roadway, given that ch. 346 applies generally to rules of the road and that ch. 350 generally governs the operation of snowmobiles.

Furthermore, ch. 350 has a specific section relating to careless operation of a snowmobile [s. 350.10 (2), Stats.]. While that section does not parallel s. 346.62, it can be argued that the more specific provision in ch. 350 is intended to govern the careless operation of a snowmobile, not the more general provision of s. 346.62 (courts, to resolve questions of statutory interpretation, often invoke the rule that a specific statutory provision controls over a general provision). Note, also, that s. 941.01, Stats., makes it a Class A misdemeanor to endanger another's safety by a high degree of negligence in the operation of a vehicle (including a snowmobile) not upon a highway. Other provisions in the Criminal Code may also apply to specific instances of snowmobile operation that involve an element of reckless operation (e.g., s. 940.10, homicide by negligent operation of a vehicle). Thus, a broad range of reckless operation of snowmobile activities is covered even if s. 346.62 does not apply.

An opinion of the Attorney General, while not directly on point, appears to assume that s. 350.10 (2), not s. 346.62, applies generally to the reckless operation of snowmobiles [see 57 OAG 142, attached]. That opinion also makes reference to s. 941.01. Similarly, according to DNR legal staff, DNR instructs its law enforcement personnel that careless operation of a snowmobile is covered by ch. 350 or applicable provisions of the Criminal Code; no mention is made to law enforcement personnel of s. 346.62.

Finally, the uncertainty regarding the application of s. 346.62 to the operation of a snowmobile not on a roadway would almost certainly be resolved in favor of a person charged with causing bodily harm to another or great bodily harm to another by the negligent operation of a snowmobile because those violations carry criminal penalties. It is a maxim of statutory construction that a criminal statute is strictly construed [*Donaldson v. State*, 923 Wis. 2d 306, 286 N.W. 2d 817 (1980)].

**Effect of Assembly Bill 649 on the Applicability of s. 346.62**

If one agrees with the conclusion that s. 346.62 currently is inapplicable to the operation of a snowmobile, then the changes made by Assembly Bill 649 have no effect on the application of s. 346.62 to the operation of a snowmobile. Assuming, however, that s. 346.62 does apply to the operation of a snowmobile, the issue of the effect of Assembly Bill 649 on that application raises still more uncertainty.

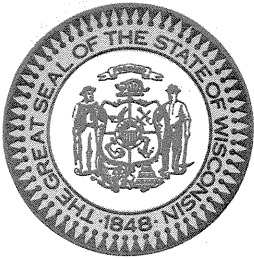
By virtue of s. 346.02 (10), s. 346.62 does not apply to the operator of a snowmobile upon a roadway. Under s. 346.61, s. 346.62 currently is applicable upon highways and upon all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for their use. Thus, if s. 346.62 applies to snowmobiles not on a highway, its application to snowmobiles under current law would be limited to the shoulder of a highway and upon all premises held out to the public for use of their motor vehicles. Of course, "motor vehicles," as defined in s. 340.01 (35), does not include snowmobiles. On the other hand, it could be argued that this limiting definition is unreasonable given the definition of "vehicle," which includes snowmobiles, in the reckless driving statute, s. 346.62. The same uncertainty regarding the scope of the application provisions of s. 346.61 as applied to snowmobiles is raised by the revised language of Assembly Bill 649, which applies the reckless driving statute to all premises "constructed or maintained in such a manner as to accommodate vehicular traffic." Again, there is an inconsistency between the definition of "vehicle" that generally applies to ch. 346 [s. 340.01 (74)] and the definition of "vehicle" that applies to the reckless driving statute.

Thus, even assuming for the sake of argument that s. 346.62 may apply to the operation of a snowmobile under certain circumstances, it can be asserted that under Assembly Bill 649, as under current law, the scope of that application is unclear. That uncertainty, combined with the accumulated weight of uncertainty regarding the application of s. 346.62 to the operation of a snowmobile under any circumstance, supports the position that s. 346.62 does not apply to the operation of a snowmobile and, therefore, that Assembly Bill 649 does not affect the application of s. 346.62 to the operation of a snowmobile.

If you need additional information or have any questions, please feel free to contact me.

DD:kja:ky;wu

Attachment



## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

### MEMO

Date: June 4, 1993  
To: All Legislators  
From: Rep. David Brandemuehl *gob*  
Re: LRB 3045/1 Drunken Driving

A recent Wisconsin Supreme Court ruling held that the laws regarding drunk driving did not apply to private parking lots. As a result, a police officer can see a person stumble drunk over to a car in a parking lot, but must wait until the person drives onto a public highway before a charge of drunken driving can be made.

I am introducing a bill to change the statutes to make drunken driving law applicable to any premises that are constructed and maintained in such a manner as to accommodate vehicular traffic. This expands the law to include private parking lots.

The analysis by the LRB is printed below. If you would like to co-sponsor this bill, please contact Jeff Thompson in my office at 6-1170 by June 18, 1993.

---

#### Analysis by the Legislative Reference Bureau

Under current law, the laws prohibiting reckless driving and driving while under the influence of an intoxicant or controlled substance and the laws requiring a person involved in an accident to perform certain acts apply to all highways and upon all premises held out to the public for use of their motor vehicles. The Wisconsin supreme court, in City of Kenosha v. Phillips, 142 Wis. 2d 549 (1988), held that a private parking lot of a company posted with a sign restricting the use of the parking lot was not "held out" to the public for use of their motor vehicles and therefore that the laws regarding drunk driving did not apply to that parking lot. The court affirmed the circuit court dismissal of a charge of drunken driving against the defendant because the defendant was operating a motor vehicle while in the company parking lot.

This bill provides that the laws prohibiting reckless driving and driving while under the influence of an intoxicant or controlled substance and the laws requiring a person involved in an accident to perform certain acts are applicable to any premises that are constructed and maintained in such a manner as to accommodate vehicular traffic, thus expanding the applicability of those laws to include private parking lots.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

---

## FISCAL ESTIMATE

1995 Session

DOA-2048 (R10/92)

☒ ORIGINAL  
☐ CORRECTED☐ UPDATED  
☐ SUPPLEMENTALLRB or Bill No./Adm. Rule No.  
LRB 0075/P1

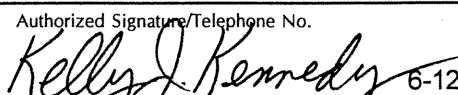
Amendment No.

Subject <b>OWI and reckless driving on private property</b>		
Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.  <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
Local: <input type="checkbox"/> No local government costs		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> VTAE Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Ch. 20 Appropriations

## Assumptions Used in Arriving at Fiscal Estimate

This bill explicitly provides that laws prohibiting operating a motor vehicle while intoxicated and reckless driving are applicable on all premises, both publicly and privately owned.

The Department does not enforce traffic laws and would not be affected by this proposal. Locals may be affected by its provisions in that they may see a slight increase in the number of arrests under these laws. Private parking lots and land will no longer be a defense for the drivers in certain cases. The district attorneys may see more cases taken to trial, but the department expects a minimal fiscal effect.

Long-Range Fiscal Implications		
Agency/Prepared by: (Name & Phone No.) Justice - Kelly Kennedy 6-1221	Authorized Signature/Telephone No.  6-1221	Date January 17, 1995

1995 Session

FISCAL ESTIMATE  
DOA-2048 N(R10/94)☒ ORIGINAL      ☐ UPDATED  
☐ CORRECTED      ☐ SUPPLEMENTALLRB or Bill No./Adm. Rule No.  
**LRB-0075/P1**Amendment No. if Applicable  
—

Subject

**APPLICATION OF INTOXICATED DRIVING LAWS TO CERTAIN PRIVATE PROPERTY**

Fiscal Effect

State: ☐ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation.☒ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☒ Yes ☐ No☐ Increase Existing Appropriation    ☐ Increase Existing Revenues  
☐ Decrease Existing Appropriation    ☐ Decrease Existing Revenues  
☐ Create New Appropriation☐ Decrease CostsLocal: ☐ No local government costs

1. ☒ Increase Costs  
    ☐ Permissive    ☒ Mandatory
2. ☐ Decrease Costs  
    ☐ Permissive    ☐ Mandatory

3. ☐ Increase Revenues  
    ☐ Permissive    ☐ Mandatory
4. ☐ Decrease Revenues  
    ☐ Permissive    ☐ Mandatory

5. Types of Local Governmental Units Affected:
- ☐ Towns      ☐ Villages      ☐ Cities
- ☒ Counties    ☐ Others \_\_\_\_\_
- ☐ School Districts    ☐ WTCS Districts

Fund Sources Affected

☒ GPR    ☐ FED    ☐ PRO    ☐ PRS    ☐ SEG    ☐ SEG-S

Affected Ch. 20 Appropriations

S.20.475(1)(d)

Assumptions Used in Arriving at Fiscal Estimate

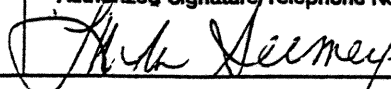
There are no data available indicating the number of prosecutorial referrals that this expansion of the law will permit. However, there is no reason to expect that it will be a number sufficient to necessitate an increase in prosecutorial staff.

Long-Range Fiscal Implications

Agency/Prepared by: (Name &amp; Phone No.)

DA/Stuart Morse (608) 267-2700

Authorized Signature/Telephone No.

 (608) 266-3508

Date

1/18/95



FE-STATE ✓ FE-LOCAL ✓  
RET \_\_\_\_\_ TAX \_\_\_\_\_  
LAKEBED \_\_\_\_\_

**1993 ASSEMBLY BILL \_\_\_\_\_**

LRB

AN ACT .... relating to expanding the premises where certain offenses related to reckless driving while under the influence of an intoxicant or controlled substance and the duties person involved in an accident apply.

Introduced by Representative BRANDEMUEHL Cosponsored by Senator Huelsma  
(PRINCIPAL AUTHOR)

(BY REQUEST OF)

(CONTINUE HERE FOR ADDITIONAL REPRESENTATIVES)

BOCK

DTTE

# GROBSCHMIDT

LADWIG

OTT

**ROBERTS**

SILBAUGH

RYBA

LAFAVE

DUFF

URBAN

HINKFUSS

(CONTINUE HERE FOR ADDITIONAL SENATOR)

PETAK

ROSENZWEIG

DARLING

# 1995 Session

LRB or Bill No./Adm. Rule No.

LRB 0075/1

Amendment No. if Applicable

## FISCAL ESTIMATE DOA-2048 (R 10/92)

☒ ORIGINAL ☐ UPDATED  
☐ CORRECTED ☐ SUPPLEMENTAL

### Subject

Expanded Premises for Driving Offenses

### Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues  
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues  
☐ Create New Appropriation

☒ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☒ Yes ☐ No

☐ Decrease Costs

Local: ☐ No local government costs

1. ☐ Increase Costs  
☐ Permissive ☐ Mandatory  
2. ☐ Decrease Costs  
☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory  
4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:  
☐ Towns ☐ Villages ☐ Cities  
☐ Counties ☐ Others  
☐ School Districts ☐ VTAE Districts

### Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

### Affected Ch. 20 Appropriations

20.395(5)(cq), 20.395(5)(dq)

### Assumptions Used in Arriving at Fiscal Estimate

Current state law prohibiting reckless driving, driving while under the influence of an intoxicant or controlled substance, and requiring a person involved in an accident to perform certain acts, applies to all highways and premises held out to the public for use of their motor vehicles. This bill expands applicability of these laws to all premises within the state, not just those held out for use of motor vehicles.

#### Assumptions:

1. Since citations are not currently issued for these situations; there is no up-to-date information on the number of additional citations that might be issued as a result of this expansion. It is assumed that the number of citations issued statewide, as a result of this change, will increase minimally.
2. It is anticipated that this legislation will result in a workload increase for the Division of State Patrol and the Revocations & Suspensions, License Records, and Compliance & Restoration sections within the Division of Motor Vehicles. It is assumed that any increase can be absorbed within existing resources.
3. No data processing changes will be necessary, because the legislation expands current law, enabling use of an existing charge code.
4. Because the number of additional citations issued under this bill is not known, the revenue impact can not be estimated.

### Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Department of Transportation  
Roland D. Couey (608) 264-9524

Authorized Signature/Telephone No.

*James D. McDonnell*  
James D. McDonnell (608) 266-7575

Date

01/19/95

**FISCAL ESTIMATE WORKSHEET**

Detailed Estimate of Annual Fiscal Effect

DOA-2047(R10/92)

Subject



ORIGINAL



UPDATED



CORRECTED



SUPPLEMENTAL

**1995 SESSION**

LRB or Bill No/Adm.Rule No.

Amendment No.

LRB 0075/1

Expanded Premises for Driving Offenses

**I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):****II. Annualized Costs:****A. State Costs by Category**

State Operations-Salaries and Fringes

Annualized Fiscal Impact on State funds from:

Increased Costs

Decreased Costs

\$

\$ -

(FTE Position Changes)

( FTE)

(- FTE)

State Operations-Other Costs

-

Local Assistance

-

Aids to Individuals or Organizations

-

**TOTAL State Costs by Category**

\$ Indeterminate

\$ -

**B. State Costs by Source of Funds**

Increased Costs

Decreased Costs

GPR

\$

\$ -

FED

\$

\$ -

PRO/PRS

\$

\$ -

SEG/SEG-S

\$ Indeterminate

\$ -

**III. State Revenues-**

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

**TOTAL State Revenues**

\$ Unknown

\$ -

**NET ANNUALIZED FISCAL IMPACT**STATELOCAL

NET CHANGE IN COSTS

\$ Indeterminate

\$

NET CHANGE IN REVENUES

\$ Unknown

\$ Unknown

Agency/Prepared by: (Name &amp; Phone No.)

Department of Transportation

Roland D. Couey (608) 264-9524

Authorized Signature/Telephone No.

James D. McDonnell (608) 266-7575

*James D. McDonnell*

Date

01/19/95



## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

MEMO

Date: December 30, 1994  
To: All Legislators  
From: Rep. David Brandemuehl  
Re: LRB 0075/1 Drunken Driving

✓ Turner  
Urban  
✓ Notestern  
✓ G. Schmidt  
✓ Wasserman  
✓ Robson  
✓ Bock  
✓ O'H  
Silbaugh  
Owens  
Sen Darling  
Ladwig  
Riley  
Otte  
Klusman  
Abrahamson

A recent Wisconsin Supreme Court ruling held that the Wisconsin law regarding drunk driving did not apply to private parking lots. As a result, a police officer must wait until a person drives onto a public highway before a charge of drunken driving will hold up in court.

I am introducing a bill to change the statutes to make drunken driving law applicable to all premises located in the state, both publicly and privately owned. The Maryland Court of Appeals, where drunken driving provisions apply throughout the state, whether on or off a highway, upheld their law saying;

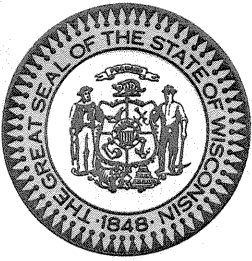
*...the menace posed by an impaired driver on purely private property is sometimes no different from that posed by one who ventures onto property open to the public generally.*

Both Illinois and Iowa have similar drunken driving laws. The analysis by the LRB is printed below. If you would like to co-sponsor this legislation, please contact Jeff Thompson in my office at 6-1170 by January 13, 1995.

### ***Analysis by the Legislative Reference Bureau***

Under current law, the laws prohibiting reckless driving and driving while under the influence of an intoxicant or controlled substance and the laws requiring a person involved in an accident to perform certain acts apply to all highways and upon all premises held out to the public for use of their motor vehicles. The Wisconsin supreme court, in *City of Kenosha v. Phillips*, 142 Wis. 2d 549 (1988), held that a private parking lot of a company posted with a sign restricting the use of the parking lot was not "held out" to the public for use of their motor vehicles and therefore that the laws regarding drunk driving did not apply to that parking lot. The court affirmed the circuit court dismissal of a charge of drunken driving against the defendant because the defendant was operating a motor vehicle while in the company parking lot.

This bill provides that the laws prohibiting reckless driving and driving while under the influence of an intoxicant or controlled substance and the laws requiring a person involved in an accident to perform certain acts are applicable to all premises located in the state, both publicly and privately owned.



## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

### MEMO

Date: December 30, 1994  
To: All Legislators  
From: Rep. David Brandemuehl  
Re: LRB 0075/1 Drunken Driving

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